

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

MATTHEW DOUGLAS,

Case No. 2:25-cv-00567-MMD-MDC

Petitioner,

ORDER

v.

JEREMY BEAN, *et al.*,

Respondents.

Matthew Douglas, an individual incarcerated at High Desert State Prison, has submitted a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254 (ECF No. 1-1 (“Petition”)), and an application to proceed *in forma pauperis* (“IFP”) (ECF No. 1). The Court will deny Douglas’s IFP application because it does not include the required financial certificate signed by an authorized prison officer. See LSR 1-2. And the Court will summarily dismiss this action without prejudice because it is plain that all of Douglas’s claims are unexhausted in state court.

The court conducts an initial review of a habeas petition and orders a response unless it plainly appears from the petition and attached exhibits that the petitioner is not entitled to relief. See *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); Rule 4 of the Rules Governing Section 2254 Cases (“Habeas Rules”) (“If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition . . .”). A procedurally defective petition may be dismissed summarily. See *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998); see also *McFarland v. Scott*, 512 U.S. 849, 856 (1994) (“Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face.”).

Douglas’s Petition includes three grounds for relief, in all three of which he claims that his federal constitutional rights have been violated by the manner in which his prison

1 sentence has been calculated and/or in state court proceedings in which he has sought  
2 relief. (ECF No. 1-1 at 3-8.) All three grounds are unexhausted in state court.

3 A federal court generally may not grant habeas corpus relief on a claim not  
4 exhausted in state court. See 28 U.S.C. § 2254(b). The exhaustion doctrine is based on  
5 the policy of federal-state comity, and is intended to allow state courts the initial  
6 opportunity to correct constitutional deprivations. See *Picard v. Conner*, 404 U.S. 270,  
7 275 (1971). To exhaust a claim, a petitioner must fairly present the claim to the highest  
8 available state court and must give that court the opportunity to address and resolve it.  
9 See *Duncan v. Henry*, 513 U.S. 364, 365 (1995) (per curiam); *Keeney v. Tamayo-Reyes*,  
10 504 U.S. 1, 10 (1992).

11 In his first ground for relief, Douglas claims his constitutional right to due process  
12 of law has been violated by Respondents' treatment of four leap years in calculating his  
13 sentence. (ECF No. 1-1 at 3.) Douglas alleges that he asserted this claim in two state  
14 habeas petitions, one filed March 4, 2024, and the other filed October 29, 2024, and in a  
15 motion to modify or correct illegal sentence, and that he has appealed the denial of relief,  
16 but there is no indication that the appeal has concluded. (*Id.* at 4; see also *id.* at 1, 10-28  
17 (attaching documents from state district court proceedings, but not from any state  
18 appellate proceedings, despite the instruction in the form petition to attach copies of "all  
19 state court written decisions regarding this conviction.").)

20 In his second ground for relief, Douglas claims his constitutional right of access to  
21 the courts has been violated because one of his state habeas petitions was denied without  
22 oral argument. (*Id.* at 5.) Putting aside that this is likely not a claim cognizable in a federal  
23 habeas action, it is plain that Douglas has not asserted this claim in state court. (*Id.* at 6.)

24 And in his third ground for relief, Douglas claims that his constitutional right to be  
25 free of double jeopardy has been violated because his sentence, as calculated by  
26 Respondents, violates Nevada's "40% rule." (*Id.* at 7.) Douglas alleges that he asserted  
27 this claim in his March 4, 2024, state habeas petition but that he did not raise the claim  
28

1 on appeal from the denial of relief in that case, and he acknowledges that he did not  
2 assert this claim in his October 29, 2024, state habeas petition. (*Id.* at 8.)

3 Given that all of Douglas's claims are unexhausted in state court, the Petition fails  
4 to state a claim upon which habeas corpus relief could be granted. This action will be  
5 dismissed without prejudice. If Douglas wishes to initiate a new petition for writ of habeas  
6 corpus in this Court, after exhausting his claims in state court, he must submit a petition  
7 on the correct form, and he must either pay the filing fee or file a fully completed  
8 application to proceed *in forma pauperis*, also on the correct form, including the required  
9 financial certificate. If he does so, Douglas should not put the case number of this case  
10 on the documents he submits to initiate the new action.

11 It is therefore ordered that Petitioner's Application to Proceed *in Forma Pauperis*  
12 (ECF No. 1) is denied.

13 It is further ordered that this action is dismissed without prejudice.

14 It is further ordered that Petitioner is denied a certificate of appealability because  
15 no reasonable jurist would find this ruling to be debatable or wrong.

16 The Clerk of Court is directed to enter judgment accordingly and close this case.

17 The Clerk of Court is further directed to serve a copy of this order on the Attorney  
18 General of the State of Nevada. The Attorney General need take no action with respect  
19 to this case.

20 DATED THIS 7<sup>th</sup> Day of April 2025.

21  
22 

23 MIRANDA M. DU  
24 UNITED STATES DISTRICT JUDGE  
25  
26  
27  
28